

Message Text

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PAGE 01 GENEVA 02655 162051Z

72

ACTION DLOS-05

INFO OCT-01 EUR-12 IO-10 ISO-00 AF-06 ARA-10 EA-10 NEA-09

FEA-01 ACDA-10 AGR-10 AID-05 CEA-01 CEQ-01 CG-00

CIAE-00 CIEP-02 OFA-01 COME-00 DODE-00 DOTE-00 EB-07

EPA-04 ERDA-07 FMC-02 H-02 INR-07 INT-05 JUSE-00 L-02

NSAE-00 NSC-05 NSF-02 OES-05 OMB-01 PA-02 PM-03

PRS-01 SP-02 SS-15 USIA-15 LOC-01 CU-04 /186 W

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TO SECSTATE WASHDC 2139

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FROM USDEL LOS

E.O. 11652: N/A

TAGS: PLOS ERG OECD TECH

SUBJECT: LOS: IEA, R&D GUIDING PRINCIPLES

1. BURTON MET WITH STROHL, LEGAL ADVISER TO NEA, APRIL 12 TO DISCUSS ANNEX AND APPENDIX CONCERNING INTELLECTUAL PROPERTY. STROHL INDICATED THAT COMMENTS ON ANNEX WERE DUE FROM SUB-GROUP ON R&D MEMBERS, BUT THAT UNFORTUNATELY NONE HAD BEEN RECEIVED. THIS LEFT HIM OBLIGATED TO PRODUCE A REDRAFT OF ANNEX/APPENDIX WITHOUT GUIDANCE FROM STATES.

2. HE EXPRESSED HIS PERSONAL VIEW THAT PRESENT DRAFT WITH A LITTLE FINE-TUNING ON ROYALTY-FREE CONCEPT WAS GOOD FOR SIMPLE COOPERATIVE ACTIVITIES AND QUESTIONED WHETHER SIMILAR DETAILED DRAFT WOULD BE USEFUL FOR CONSORTIA GUIDANCE. BUTON INDICATED SOME DOUBT WHETHER ANY CONSORTIA COULD ADOPT PRE-FABRICATED PATENT PROVISIONS AND SUGGESTED STICK-UNCLASSIFIED

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PAGE 02 GENEVA 02655 162051Z

ING TO GENERAL PRINCIPLES MIGHT BE SOUND. FOR SIMPLE

EXCHANGE OF SCIENTISTS, HOWEVER, BURTON SAID IT MIGHT PROVE VERY USEFUL TO HAVE DRAFT PROVISIONS THAT COULD BE INCORPORATED WITH LITTLE OR NO MODIFICATION. STROHL AGREED AND SUGGESTED A NON-LAWYER HAD GREAT DIFFICULTY WITH THE TECHNICAL APPENDIX. HE SUGGESTED AN EXPLANATORY STATEMENT SETTING FORTH THE BASIC CONCEPTS AND OBJECTIVES TO HELP EXPEDITE APPROVAL OF GUIDING PRINCIPLES.

3. THERE FOLLOWED A BROAD GENERAL DISCUSSION OF PATENT PRINCIPLES WITH EMPHASIS ON ROYALTY SHARING ARRANGEMENTS IN CONSORTIA. THREE METHODS OF ROYALTY SHARING WERE IDENTIFIED. FIRST, ROYALTIES COULD BE COLLECTED BY EACH PARTICIPANT UNDER UNIFORM TERMS AND CONDITIONS, PLACED IN A COMMON POT, AND DISTRIBUTED AMONG PARTICIPANTS SO AS TO REFLECT EQUITABLE SHARING OF THE CONTRIBUTIONS, RIGHTS, BENEFITS, ETC. SECOND, EACH PARTICIPANT COULD KEEP WHAT HE COLLECTS EITHER UNDER UNIFORM TERMS AND CONDITIONS OR UNDER ITS OWN NATIONAL POLICIES. THIRD, ONE PARTICIPANT COULD SERVE AS AN AGENT FOR THE GROUP AND OBTAIN PATENTS, GRANT LICENSES AND COLLECT ROYALTIES UNDER AGREED CONTRACT. WE AGREED THAT EACH HAS ADVANTAGES AND PROBLEMS AND FURTHER THOUGHT IS NEEDED.

4. DURING DISCUSSION OF ROYALTY SHARING BURTON DISCOURAGED ANY IDEA THAT ENTAILED PATENT HELD BY PARTICIPANT WITH DISCRETION TO DENY ACCESS FOR US FIRMS TO ANY MARKET OR TO IMPOSE UNREASONABLE TERMS OR CONDITIONS. STROHL SEEMED CONCERNED THAT AGREEMENT WAS NECESSARY ON ROYALTIES TO BE CHARGED ALL LICENSES BY EACH PARTICIPANT IN ORDER TO MAINTAIN EQUITABLE BASIS FOR ROYALTY SHARING.

5. STROHL WILL PREPARE PAPER EXPLAINING APPENDIX SLT(75) (27) AND SEEKING TO ELABORATE SECOND PART OF ANNEX. HE WILL PASS COPY WITHIN TWO WEEKS TO US MISSION OECD FOR TRANSMITTAL TO DEPARTMENT AND ERDA AS WELL AS US DEL LOS FOR BURTON BEFORE IT IS CIRCULATED. US COMMENTS ON THIS PAPER WILL BE TAKEN

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PAGE 03 GENEVA 02655 162051Z

INTO ACCOUNT IN LATER CIRCULATED DRAFT. DALE

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